

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 HUI SON LYE and DAVID LYE,
11 husband and wife,

Plaintiffs,

v.

CITY OF LACEY, et al.

Defendants.

CASE NO. 3:11-cv-05983-RBL
ORDER ON DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS AND PLAINTIFFS'
MOTION TO AMEND

14 THIS MATTER is before the court on the following Motions: The Corporation of
15 Catholic Archbishop of Seattle, and Farrell and "John Doe" Gilson's (together the "Church
16 Defendants") Motion to Dismiss and for Judgment on the Pleadings [Dkt. #13], and Plaintiffs'
17 Motion to Amend their Complaint [Dkt. #22], which was filed in part to address the deficiencies
18 claimed in the Motion to Dismiss.

19 For the reasons below, Defendants' Motion to Dismiss is GRANTED, and Plaintiffs'
20 Motion to Amend is GRANTED in part and DENIED in part.

21 **I. BACKGROUND**

22 Plaintiffs Hui Son Lye and David Lye are (or were formerly) members of Sacred Heart
23 Parish, a Catholic Church in Lacey, WA, with a significant percentage of Korean members.

1 According to Plaintiffs, the Archbishop of the Seattle Archdiocese, Alex Burnett, ordered in
2 2007 that Mass at Sacred Heart be given in Korean. Father Im (apparently a Korean-speaking
3 priest) did this for some period of time, but then, for reasons which are not clear and probably
4 not important, he stopped. Plaintiff Hui Son Lye, a Korean, concedes that she was upset by this
5 and that, beginning in 2009, she sought to “inform the Archbishop” that his order was being
6 ignored. She also began “voicing her concern to church leaders and elected leaders of the Sacred
7 Heart Korean Community” and “advocating for the Archbishop to restore Korean Mass at Sacred
8 Heart.” [Pl.’s Proposed Amended Complaint, Dkt. #22 at 2-3].

9 Plaintiff Hui Son Lye alleges that Sacred Heart’s Pastoral Coordinator, Defendant Ferrell
10 Gilson, saw Lye’s advocacy as a threat to Gilson’s authority in the parish, and therefore “sought
11 retribution against [Plaintiff].” Lye contends that she was removed from altar service in July
12 2009, and that Gilson had her expelled as a member in August of that year. When Lye continued
13 her advocacy for a Korean mass, Gilson became infuriated and would no longer allow Lye’s
14 daughters to perform altar service or attend youth group. The Church received an anonymous
15 letter that was critical of Gilson, and Lye contends that Gilson convinced the Church that she
16 wrote it—a claim she vehemently denies. The Archbishop warned her to cease her advocacy and
17 threatened canonical penalties.

18 Ultimately, the Archbishop and the Archdiocese’s general counsel formally told Lye not
19 to attend Mass as Sacred Heart. On December 22, 2009, the general counsel informed Lye in
20 writing that she was free to attend Mass at any other Parish, but that she was no longer welcome
21 at Sacred Heart. According to the letter, this exclusion was based on her “threatening and
22 harassing actions against parish personnel.” [Dkt. #22 at 4]. Nevertheless, Lye affirmatively
23 alleges that she did not understand why the Church was excluding her, and so she elected to
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1 attend Mass at Sacred Heart on Christmas, just three days later. She claims she did not cause any
2 disruption, and that, other than the written warning not to enter the premises, nobody asked her
3 to leave. The following day, Lacey Police officer Dave Miller (a parishioner) assisted Gilson in
4 filing a “trespass warning,” and he then personally served it on Lye.

5 On March 21, 2010, despite the letters and the trespass warning Lye concedes was served
6 on her, she again attended Mass at Sacred Heart. After the service, Lye was arrested for trespass.
7 She alleges that the Lacey Police Officers used excessive force in doing so and that they did not
8 have probable cause to arrest her because she had not criminally trespassed and there was no
9 anti-harassment or “no contact” Order against her. She claims that the Father Bede (who is not a
10 defendant) announced at the next week’s Mass that “the person who was arrested suffers from
11 mental illness.” The trespass charge against Lye was ultimately dismissed.

12 Lye alleges that she sued the Church and Gilson in the spring of 2011 over these
13 incidents, and that, in anticipation that this would lead to some sort of reconciliation, she
14 dismissed the case without prejudice and again began attending Mass. Instead of reconciling, the
15 Church again told her to stop attending Mass at Sacred Heart or she would be arrested for
16 trespass. Lye’s Counsel responded by telling the Church that the December 2009 trespass
17 warning had expired and that Lye was going to attend Mass. Counsel apparently told the Church
18 that if it could obtain a “no contact” Order, it should do so, but that he did not believe it was
19 entitled to one, and that therefore it could not preclude Lye from attending public Mass.

20 In response, the Church issued another formal trespass warning, and two Lacey officers
21 served it on Lye. On July 1, 2011, in the face of these warnings, Lye again attended Mass at
22 Sacred Heart, and she was again arrested for trespass.

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1 Lye and her husband sued, alleging claims for violation of her Constitutional rights to
2 free speech and free exercise of religion, false arrest, false imprisonment, civil conspiracy,
3 outrage, defamation and battery.

4 The Church Defendants seek Judgment on the Pleadings under Fed. R. Civ. P. 12(c),
5 arguing primarily that all of Plaintiffs' claims against it arise out of an internal church dispute
6 and are barred by the First Amendment and the Church Autonomy Doctrine.¹ They argue that
7 this court does not have jurisdiction to hear such disputes, and that the Plaintiffs have failed to
8 state a claim upon which relief can be granted. [Dkt. #13]. Plaintiffs argue in response that the
9 dispute is secular, not internal, and that the First Amendment does not preclude the Court from
10 hearing tort claims. They emphasize that the Complaint alleges facts sufficient to state claims
11 for relief under *Iqbal*'s plausibility standard, and if not, the Court should grant leave to amend.
12 While Defendants' Motion was pending, Plaintiffs filed a Motion for Leave to Amend [Dkt. 21,
13 22], seeking to add parties and address deficiencies in their complaint.

14 **II. DISCUSSION**

15 A Rule 12(c) motion is evaluated under the same standard as a motion under Rule
16 12(b)(6). Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
17 theory or absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
18 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege
19 facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662,
20 678 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual
21 content that allows the court to draw the reasonable inference that the defendant is liable for the
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¹ Because Plaintiffs' claims are insufficient as a matter of law, the Court does not address
the church autonomy issue.

1 misconduct alleged.” *Id.* Although the Court must accept as true the Complaint’s well-pled
2 facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise
3 proper [Rule 12(b)(6)] motion. *Vasquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007);
4 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation
5 to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions,
6 and a formulaic recitation of the elements of a cause of action will not do. Factual allegations
7 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,
8 550 U.S. 544, 555 (2007) (citations and footnote omitted). This requires a plaintiff to plead
9 “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S.
10 662, 678 (citing *Twombly*).

11 **A. Church Defendants’ Motion to Dismiss**

12 1. Constitutional Claims

13 A plaintiff cannot assert a 42 U.S.C. § 1983 claim against any defendant who is not a
14 state actor. *See West v. Atkins*, 487 U.S. 42, 48 (1988). This determination is made using a two-
15 part test: (1) “the deprivation must . . . be caused by the exercise of some right or a privilege
16 created by the government or a rule of conduct imposed by the government;” and (2) “the party
17 charged with the deprivation must be a person who may fairly be said to be a *governmental
actor*.” *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826, 835 (9th Cir. 1999)
18 (emphasis added).

20 Because the Church Defendants are not state actors, they cannot, as a matter of law,
21 infringe upon Lye’s First Amendment rights. Lye alleges that the Church Defendants acted in
22 “conspiratorial concert” with the City of Lacy, and that the City “agreed to assist Ferrell Gilson
23 and the Archdiocese of Seattle in taking retribution against” Lye. Pls.’ Clomp. ¶¶ 17, 7,
24 respectively. These conclusory allegations of joint action between the Church Defendants and

1 the City of Lacy offer few insights into the specific nature of the alleged conspired actions, and
2 certainly do not transform the Church Defendants into state actors. *See McHugh v. City of*
3 *Tacoma*, C10-5450BHS, 2011 WL 2457917 (W.D. Wash. June 16, 2011) (citing *Benavidez v.*
4 *Gunnell*, 722 F.2d 615, 618 (10th Cir.1983) (holding that the mere furnishing of information to
5 police officers does not constitute joint action under color of state law, and does not render a
6 private citizen liable under § 1983). Lye has not, and cannot, show that the Church Defendants
7 were participants in any joint activity (much less any unlawful activity) with the police or with
8 any other state actor.

9 Plaintiffs' First Amendment claims are fatally flawed. The Church Defendants' Motion
10 with respect to the above claim is GRANTED, and Plaintiffs' constitutional claims against the
11 Church Defendants are DISMISSED WITH PREJUDICE.

12 2. Conspiracy

13 Lye also brings a conspiracy claim against the Church Defendants. The Church
14 Defendants argue that Lye pled no facts supporting a valid conspiracy claim, and is insufficient
15 as a matter of law.

16 To establish a prima facie case for conspiracy, a plaintiff must show: (1) two or more
17 people combined to accomplish an unlawful purpose, or combined to accomplish a lawful
18 purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the
19 conspiracy. *Woody v. Stapp*, 146 Wash. App. 16, 22 (2008). The only plausible agreement
20 between the Church Defendants and the City was to remove Plaintiff Lye from the Church
21 Defendants' private property for trespassing. Lye argues that the trespass warning was
22 unwarranted because she did not, on any occasion, cause a disturbance while attending Sacred
23 Heart. She essentially argues that since the trespass warning was unwarranted, the City and the
24 Church Defendants made an agreement to accomplish an unlawful purpose.

1 In Washington, criminal trespass is defined as “knowingly enter[ing] or remain[ing]
2 unlawfully in or upon premises of another.” Wash. Rev. Code § 9A.52.080. A person enters or
3 remains unlawfully in or upon premises when “he is not then licensed, invited or otherwise
4 privileged to so enter or remain.” Wash. Rev. Code § 9A.52.010. A private property owner may
5 revoke an individual’s privilege to be on its property, even if the property is otherwise open to
6 the public. *State v. Bellerouche*, 129 Wash. App. 912, 915–16 (2005). Thus, it is unlawful to
7 enter or remain on private property where the private property owner has revoked the privilege to
8 be there.

9 It is undisputed that Sacred Heart Church is private property. The Church Defendants
10 revoked Lye’s privilege to attend Sacred Heart, rendering it unlawful for Lye to be on Church
11 property. Despite Lacy police issuing Lye a trespass warning, she entered Sacred Heart’s
12 premises anyway. Lye does not allege facts showing that there was an agreement between the
13 City and the Church Defendants to accomplish any purpose other than to remove a trespasser
14 from private property. That purpose was lawful, and was furthered by lawful means. Lye again
15 makes conclusory allegations that City of Lacy issued trespass warnings as part of conspiracy
16 with the Church Defendants to prevent her from exercising her First Amendment rights. Lye’s
17 allegations do not alter the conclusion that she has not and cannot plead elements of a conspiracy
18 claim.

19 The Church Defendants’ Motion with respect to the above claim is therefore GRANTED,
20 and Plaintiffs’ conspiracy claim against the Church Defendants is DISMISSED WITH
21 PREJUDICE.

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1 3. Outrage

2 Lye asserts that the Church Defendants' conduct was outrageous, and as a result, she has
3 suffered severe emotional distress. The Church Defendants argue that Lye has not pled facts
4 sufficient to support an outrage claim.

5 The elements of the tort of outrage are (1) extreme and outrageous conduct, (2)
6 intentional or reckless infliction of emotional distress, and (3) the plaintiff actually suffers severe
7 emotional distress. *Kloepfel v. Bokor*, 149 Wash.2d 192, 195 (2003). The conduct must be "so
8 outrageous in character, and so extreme in degree, as to go beyond all possible bounds of
9 decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."

10 *Saldivar v. Momah*, 145 Wash. App. 365, 389 (2008).

11 The Church Defendants' conduct was not outrageous. Asking the police to remove an
12 unwanted individual from your private property for trespassing is not "atrocious, and utterly
13 intolerable in a civilized community." *Saldivar*, 145 Wash. App. at 389. Lye has not pled facts
14 establishing any of the elements of an outrage claim.

15 The Church Defendants' Motion with respect to Plaintiffs' outrage claim is therefore
16 GRANTED, and Plaintiffs' outrage claim against the Church Defendants is DISMISSED WITH
17 PREJUDICE.

18 4. Defamation

19 Lye also alleges that the Church Defendants defamed her. She claims that she suffered
20 damages because of Father Bede's alleged announcement to the congregation that she suffered
21 from a mental illness. The Church Defendants argue primarily that even if Father Bede made the
22 alleged statement, it was an opinion protected by the First Amendment and not actionable.

23 A defamation action consists of four elements: (1) a false statement; (2) lack of privilege;
24 (3) fault; and (4) damages. *Duc Tan v. Le*, 161 Wash. App. 340, 352 *review granted*, 172 Wash.

1 2d 1010 (2011). Lye also must prove that the alleged defamatory statement was “made of and
2 concerning” her. *Sims v. Kiro, Inc.*, 20 Wash. App. 229, 233 (1978). Plaintiffs’ complaint “must
3 consist of specific, material facts, rather than conclusory statements, that would allow a jury to
4 find that each element of defamation exists.” *Paterson v. Little, Brown & Co.*, 502 F. Supp. 2d
5 1124, 1132 (W.D. Wash. 2007) (citing *LaMon v. Butler*, 112 Wash.2d 193, 197, 770 P.2d 1027
6 (1989)).

7 Plaintiffs’ defamation claim against the Church Defendants is insufficient as a matter of
8 law. The individual who allegedly made the defamatory statement (Father Bede) is not a named
9 party in this suit. Plaintiffs neither argue nor cite any authority for the proposition that the
10 Church Defendants are, or could be, vicariously liable for an alleged defamatory statement.
11 Plaintiffs’ defamation claim fails on this deficiency alone. The Church Defendants Motion is
12 therefore GRANTED, and Plaintiffs’ defamation claim against the Church Defendants is
13 DISMISSED WITH PREJUDICE.

14 5. Intentional Tort Claims

15 Lye also brings claims against the Church Defendants for battery, false arrest, and false
16 imprisonment. The Church Defendants argue that these claims are insufficient because the
17 Complaint does not contain facts alleging that the Church Defendants actually battered, arrested,
18 or imprisoned Lye. They assert that Plaintiffs allege only that individual police officers
19 committed the above torts.

20 The crux of Lye’s intentional tort claims hinges on the fallacy that the Church Defendants
21 are jointly liable for the actions of the officers. Plaintiffs fail to establish that the Church
22 Defendants were acting under color of state law or in conspiracy with the City. In addition,
23 Plaintiffs cite no authority suggesting that a third party could be vicariously liable for intentional
24 torts of police officers.

1 The Church Defendants Motion with respect to the claims above is therefore GRANTED,
2 and Plaintiffs' intentional tort claims against the Church Defendants are DISMISSED WITH
3 PREJUDICE.

4 **B. Plaintiffs' motion to amend**

5 Plaintiffs seek to add individual officers as defendants [Dkt. 21, 22]. Plaintiffs' proposed
6 amended complaint [Dkt. 21] also rewrites a substantial portion of their factual allegations. The
7 Church Defendants oppose Plaintiffs' Motion, arguing that Plaintiffs have not stated an adequate
8 basis for going beyond their sole request to add new defendants to their complaint [Dkt. 23].

9 Leave to amend a complaint under Rule 15(a) "shall be freely given when justice so
10 requires." *Carvalho v. Equifax Info. Services, LLC*, 629 F.3d 876, 892 (9th Cir. 2010) (citing
11 *Forman v. Davis*, 371 U.S. 178, 182 (1962)). Moreover, this policy is "to be applied with
12 extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)
13 (citations omitted). In determining whether to grant leave under Rule 15, courts consider five
14 factors: "bad faith, undue delay, prejudice to the opposing party, futility of amendment, and
15 whether the plaintiff has previously amended the complaint." *United States v. Corinthian
Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).

17 The party opposing amendment bears the burden of showing prejudice. *DCD Programs,
18 Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). The Church Defendants have not argued
19 that they would suffer any prejudice because of Plaintiffs' proposed amendments. Plaintiffs seek
20 to add the individual officers who took part in the arrests of Plaintiff Lye. In addition, the
21 proposed amended complaint attempts to clarify factual allegations in support of Plaintiffs
22 claims, stating no new claims against the Church Defendants. The proposed amendments,
23 therefore, are not prejudicial.

1 The Church Defendants next argue that Plaintiffs already have filed three different
2 complaints, and allowing a fourth would be improper because Plaintiffs have repeatedly failed to
3 cure the deficiencies in their complaint. Plaintiffs contend that they filed their original complaint
4 in state court and amended it as a matter of course before Defendants filed an answer. Plaintiffs
5 then voluntarily dismissed that action without prejudice. After abandoning the first suit,
6 Plaintiffs initiated this action in state court, and the Church Defendants removed. Plaintiffs
7 argue that neither this Court nor any other court has found Plaintiffs' complaint deficient, and
8 there is no reason to deny leave to amend.

9 District courts have broad discretion to deny leave to amend where a plaintiff previously
10 has amended the complaint. *World Wide Rush, LLC v. City of Los Angeles*, 606 F.3d 676, 690
11 (9th Cir. 2010). Since this is Plaintiffs' first request for leave to amend in federal court, the
12 Court will not deny leave solely on the basis that Plaintiffs have repeatedly failed to cure
13 deficiencies in their complaint.

14 Finally, the Church Defendants assert that even if Plaintiffs' were allowed to amend their
15 complaint, they would not be able to cure the deficiencies in their claims, and thus the
16 amendments would be futile. Plaintiffs maintain that they have pled facts sufficient to support
17 all of their claims against the Church Defendants.

18 Although leave to amend shall be freely given when justice so requires, a court may deny
19 leave if the amended complaint would be futile. *Gordon v. City of Oakland*, 627 F.3d 1092,
20 1094 (9th Cir. 2010). A proposed “[a]mendment is futile if no set of facts can be proved under
21 the amendment to the pleadings that would constitute a valid and sufficient claim or defense.”
22 *Gaskill v. Travelers Ins. Co.*, No. 11-cv-05847-RJB, 2012 WL 1605221, at *2 (W.D. Wash. May
23 8, 2012) (citing *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9th Cir.1997)).

1 Plaintiffs' proposed amendments suffer from the same deficiencies described above. The
2 only claim that has a possibility of success—albeit a slim one—is Plaintiffs' defamation claim.
3 However, Plaintiffs do not seek to add as a party the individual who allegedly made the
4 defamatory statement, and thus they cannot maintain a defamation claim against the Church
5 Defendants. In short, Plaintiffs' claims against the Church Defendants are futile because there
6 exists "no set of facts" that Plaintiffs could prove that would cure their fatally flawed claims.

7 For these reasons, Plaintiffs' Motion is GRANTED in part and DENIED in part, allowing
8 Plaintiffs only to add additional parties.

9 Dated this 29th day of June, 2012.

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11 Ronald B. Leighton

12 United States District Judge
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